

## Appendix L

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Memorandum of Understanding Between the Manzanita Band  
of the Kumeyaay Nation and the City of Calexico



**FILE COPY**

## **Manzanita Band of the Kumeyaay Nation**

April 5, 2006

Clayton Gregory  
Regional Director  
Bureau of Indian Affairs, Pacific Region  
2800 Cottage Way, Room 2820-W  
Sacramento, CA 95825

George Skibine  
Acting Deputy Assistant Secretary  
Bureau of Indian Affairs/U.S. Department of the Interior  
Policy & Economic Development for Indian Affairs  
1849 C Street, NW - Room 4600  
Washington, DC 20240

Dear Mr. Gregory and Mr. Skibine,

By letter of March 10, 2006, the Manzanita Band of the Kumeyaay Nation provided you with the Memorandum of Understanding (MOU) we have developed with the City of Calexico regarding land proposed to be taken into trust for gaming purposes within the municipal boundaries. As discussed in that letter, the Manzanita Band is preparing its trust land acquisition request to carry out the casino and trust land proposal, which has been under consideration and development for over one year.

Enclosed for your information is a revised version of the MOU that makes three changes to the document submitted on March 10. The parties have now signed and executed the document. The changes are as follows:

- 1) Section 3.2, pp. 6-7: The third paragraph has been added to provide for annual adjustments to the Revenue Sharing Payment based upon the rate of inflation.

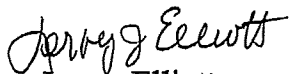
April 5, 2006  
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- 2) Section 3.5(B), p. 8: A sentence has been added to provide for payment to the school district by the City of the Development Impact Fees within 30 days of receipt from the Tribe.
- 3) Section 3.10, pp. 9-10: Clarification has been provided regarding Calexico Bond Measure J.

Please contact me if you have any questions regarding these changes to the MOU.

Thank you.

Very truly yours,



Leroy Elliott  
Tribal Chairman  
Manzanita Band of the Kumeyaay Nation

## MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding ("MOU") is made this 4<sup>th</sup> day of April, 2006, by and between the City of Calexico ("the City,") and the Manzanita Band of the Kumeyaay Nation ("the Tribe"), hereinafter also referred to as a "Party," or jointly, "Parties." The Tribe is recognized in the Federal Register as: Manzanita Band of Diegueno Mission Indians of the Manzanita Reservation, California.

### **RECITALS**

WHEREAS, the Tribe will seek approval from the Bureau of Indian Affairs ("BIA") of an application pursuant to Section 5 of the Indian Reorganization Act, 25 U.S.C. § 465, the Indian Gaming Regulatory Act, 25 U.S.C. § 2701, *et seq.* ("IGRA"), and the National Environmental Policy Act, 42 U.S.C. § 4321, *et seq.* ("NEPA"), requesting that the United States accept trust title to a parcel in the City; and

WHEREAS, pursuant to a favorable vote by the citizens of the City in June 2005, the City and the Tribe seek to work together to mitigate impacts that a casino may have; and

WHEREAS, the Tribe intends to acquire land within the City to construct an Indian gaming Facility, however no specific parcel has been identified at this time; and

WHEREAS, this MOU is based on the estimated size and description of future development of an Indian gaming Facility in the City; and

WHEREAS, no specific timeline has been identified for construction of the Facility at this time; and

WHEREAS, the proposed action of the Tribe is not a City project and is not a project subject to the discretionary approval of the City and, therefore, is not subject to otherwise applicable California laws; and

WHEREAS, the City would not otherwise have any authority with regard to the Tribe's Trust Lands nor receive compensation for impacts resulting from the use of the trust land; and

WHEREAS, this MOU is intended solely as a funding arrangement between the Parties and is not a "project" as defined by the California Environmental Quality Act ("CEQA"); and

WHEREAS, the City will perform any required environmental review for the proposed Indian gaming Facility at the earliest possible time that such review can be meaningfully accomplished; and

WHEREAS, given the uncertainty of approvals and timelines for the Indian gaming Facility, this MOU does not bind the City to providing any services at this time; and

WHEREAS, the City is prepared to support the Tribe's trust application to the United States if the Tribe enters into this enforceable MOU to mitigate the impacts of the development.

NOW, THEREFORE, the Parties agree as follows:

### **1. DEFINITIONS.**

As used in this MOU, the terms listed below shall have the meaning as follows:

"Chair" shall mean the Tribal Chairman of the Tribe.

"Chief of Police" shall mean the Chief of Police of the City of Calexico.

"Class II Gaming" shall mean Class II Gaming as defined in the IGRA.

"Class III Gaming" shall mean Class III Gaming as defined in the IGRA.

"City Council" shall mean the governing body of the City of Calexico.

"City Manager" shall mean the City Manager of the City of Calexico.

"Compact" shall mean the Tribe-State Compact or any amendments thereto which the Tribe intends to negotiate and execute with the State of California regarding Class III Gaming, if and when executed between the Tribe and the State and approved pursuant to the IGRA; or such other compact that may be substituted therefore.

"Constitution" shall mean the duly enacted Constitution of the Tribe.

"Day" shall mean calendar day unless otherwise indicated.

"Effective Date" shall mean the date this MOU is approved by the last body authorized to approve this MOU on behalf of each Party. This MOU shall not become effective unless and until the following events have occurred: (i) this MOU has been approved by the City Council and signed by the City's representative; (ii) this MOU has been approved by the

appropriate Tribal entity and signed by the Tribe's representative; (iii) the Tribe has adopted a Resolution of Limited Waiver of Sovereign Immunity substantially identical to Exhibit B attached hereto; and (iv) the Tribe's legal counsel has provided an opinion letter to the City to the effect that the waiver of sovereign immunity has been adopted in accordance with Tribal law and Federal law and is effective.

"Facility" shall mean the Indian gaming casino resort, including all future buildings, structures (temporary or permanent), hotels, restaurants, parking areas and other improvements; and all leased property, fixtures, furnishings and equipment attached to, whether existing on the Effective Date or not, forming a part of or used for the operation of gaming on land in the City.

"Fiscal Year" shall mean the period commencing July 1 of each year and ending on June 30 of the subsequent year.

"Gaming" shall mean any and all activities defined as Class II and Class III Gaming by the IGRA, NIGC Regulations, or the Compact.

"IGRA" shall mean the Indian Gaming Regulatory Act of 1988, PL 100-497, 25 U.S.C. section 2701 *et. seq.* as the same may, from time to time, be amended.

"JAMS" shall mean JAMS Endispute, or if not available, a similar organization identified by agreement of the Parties which provides professional dispute resolution services.

"Mayor" shall mean the Mayor of the City of Calexico.

"NIGC" shall mean the National Indian Gaming Commission.

"Permanent Facility" shall mean any permanent structure of the type described in Exhibit A attached hereto.

"Property" shall mean any land acquired by the Tribe in the City of Calexico prior to the land being taken into trust.

"State" shall mean the State of California.

"State Gaming Agency" shall mean the official, agency, board, or commission duly authorized to investigate, approve, and regulate gaming pursuant to the Compact or the Gambling Control Act (B&P §19800, *et. seq.*) or successor statute.

“Temporary Facility” shall mean any temporary structure placed on the Trust Lands by the Tribe in which gaming operations will be conducted.

“Term” shall mean the term of this MOU as described in Section 9.15, if required by the BIA.

“Trust Lands” shall mean any parcel of land that the Tribe acquires in the City and that is taken into trust by the United States for the benefit of the Tribe. The Parties acknowledge that the land, upon being taken in trust by the United States for the benefit of the Tribe, shall become subject to applicable federal law and shall be afforded the same status as other lands held in trust by the United States for federally recognized Indian tribes, subject to the terms and conditions of this MOU.

“Uniform Codes” shall mean collectively the uniform building code, fire code, plumbing, mechanical, electrical, and other related codes adopted by the City consistent with the State uniform codes.

## **2. PRELIMINARY PROVISIONS**

2.1 Land to be Taken into Trust. The Tribe will request that the United States take into trust for its benefit certain land in the City. If the Tribe seeks to have additional land taken into trust for purposes related to gaming after construction of the proposed Facility, the Tribe agrees to negotiate a new MOU with the City to address the impacts of any new trust land acquisition.

2.2. Compliance with Applicable Laws. The Tribe shall enact laws applicable to the Trust Lands and shall require that the Trust Lands and Facility be used and developed in a manner that complies with all requirements of the Compact, and that is consistent with the City’s general, specific and community plans, zoning ordinances, and design guidelines in effect at the time of construction of any development, to the extent that observance of such City plans, ordinances and guidelines does not infringe upon the internal self-government of the Tribe or its use of the Trust Lands. The Tribe shall adopt building standards as required by the Compact for the construction of a gaming facility, and prior to the use of any structure constructed on the Trust Lands, will provide written certification from the project architect that said structures have been constructed in accordance with said standards.

The Tribe further agrees to use its Property for the operation of a Facility in conformity with the requirements of IGRA, consistent with the requirements of this MOU and all applicable State or federal laws, as described in Exhibit A attached hereto, unless and until this MOU is amended as provided herein.

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The Tribe agrees to operate and maintain the Facility and Trust Lands as a first-class, high quality destination commercial gaming resort and continuously maintain all landscaping thereon in a healthy condition. The Tribe also agrees to remove any graffiti and/or waste matter in a timely manner. If the City finds the Facility and/or Trust Lands not to be so maintained, the City will send written notice to the Tribe, specifying with particularity the grounds of the complaint. If the City and the Tribe disagree as to this matter, either Party may seek to use the dispute resolution procedures as outlined in Section 8 of this MOU.

2.3. Environmental Review. The Tribe's application to have land taken into trust is not governed by State laws, and the Tribe is not required to submit its projects to the City for discretionary approvals. The Tribe does agree, however, to submit its future development plan for review and comment by the City staff prior to commencing any construction on the Trust Lands.

At this time, the Tribe has not purchased land within the City, and no trust application has been filed; therefore, no meaningful CEQA review can be done at this point by the City. The Parties agree that when the City initiates an environmental review process pursuant to CEQA related to any City approval of matters related to this MOU and/or any future construction by the City and/or the Tribe, the Tribe will compensate the City for the costs of environmental review in the same manner as any other similarly situated developer seeking to develop land within the City. The City will complete the environmental review process related to the City's extension of services contemplated in this MOU prior to such extension of services.

2.4 Temporary Facility. The Parties agree that a Temporary Facility may be utilized on the Trust Lands for gaming purposes prior to construction of the Permanent Facility for gaming. As long as economically feasible, the Tribe and the City agree to work cooperatively and expeditiously to pursue the construction of the Permanent Facility in a timely manner.

### 3. COMPENSATION AND BENEFITS

3.1. Payments to City. The Parties agree that the following payments will be made to the City.

3.2. Revenue Sharing Payment. As compensation for the unspecified impacts to the City, the Tribe will make an annual Revenue Sharing Payment into the General Fund of the City in the amount of \$2,000,000.00 (two million dollars). The first payment, equal to 50% of the annual payment, will be paid to the City by the Tribe upon the issuance of an occupancy permit by the Tribe for any Temporary Facility. Thereafter, until the permit for the occupancy of the Permanent Facility is issued by the Tribe, the Tribe shall annually pay the City an amount equal to 50% of the total Revenue Sharing Payment on the anniversary date of the first payment. Once the permit for the occupancy of the Permanent Facility is issued by the Tribe, the Tribe shall pay the remaining 50% of the total Revenue Sharing Payment. Thereafter, the Tribe shall pay the City the total amount of the Revenue Sharing Payment, such payment to be made within 30 days of the one-year anniversary of the previous payment. Because the scheduling and timing of the construction of any Temporary or Permanent Facility is unknown, the parties do not intend to have the Tribe pay an amount which equals more than the amount of the total Revenue Sharing Payment in any one year. Therefore the Parties agree to adjust the scheduled payment date of the total Revenue Sharing Payment accordingly, if necessary.

In the event that the construction cost of the Permanent Facility exceeds \$200,000,000.00 (two hundred million dollars), the Tribe agrees to pay to the City annually, as an additional Revenue Sharing Payment, an amount equal to 1% (one percent) of the excess amount of the construction cost over \$200,000,000.00 (two hundred million dollars). Additionally, in the event that the Tribe shall construct any expansion of or addition to the Permanent Facility that has the effect of increasing the amount of floor space inside the Permanent Facility that is devoted to gaming by 5% (five percent) or more, the Tribe agrees to pay to the City annually, as an additional Revenue Sharing Payment, an amount equal to 1% (one percent) of the cost of construction of any such expansion or addition.

After the Permanent Facility is in operation as a gaming facility, the Revenue Sharing Payment will be adjusted annually to reflect the current rate of inflation. This adjustment for inflation will thereafter be made on a yearly basis. Further, the City agrees that if another competing gaming facility is established within the United States which is located within

twenty-five (25) miles of the Manzanita Tribe's Facility, the Revenue Sharing Payment will be decreased to one million annually, with annual adjustments for the rate of inflation.

### 3.3 Permanent Fire Station.

A. The City anticipates the need for a fire station to be built on or near the Trust Lands. The station should be located at a site that will permit fire and emergency response to the Trust Lands within five (5) minutes of a call. The City estimates based on current costs that a fire station will cost approximately \$3,000,000.00 to construct. Based on the unknown location of the proposed Facility and the uncertain nature of the timing of any development, the exact method of construction of the fire station cannot be ascertained at this time. However, the Tribe agrees to pay its fair share of the cost of designing and constructing a permanent fire station based on a fair share assessment conducted by the City in accordance with applicable State law. The Tribe agrees that, at the request of the City, the Tribe will provide for the costs of the design and construction of a permanent fire station in an amount not to exceed \$3,000,000.00, with reimbursement from the City to be given to the Tribe, as is customarily done with other developers in the City. In such case, the City will reimburse the Tribe for any money that the Tribe pays beyond its fair share after adjoining landowners have paid their fair share to the City for the construction. In the event that the parties agree to utilize a temporary fire station until a permanent fire station can be constructed, the Tribe agrees to pay the costs of a temporary fire station. Construction of a fire station shall be commenced at a time that permits it be fully operational on the scheduled opening date of any temporary or permanent gaming facility to be located on the Trust Lands, provided however, that a temporary station shall be considered sufficient for this requirement.

B. Should it become necessary, the Tribe agrees to negotiate in good faith with the City for a lease agreement for a portion of the Trust Lands to be used for the placement of a temporary or permanent fire station. With respect to any land so provided by the Tribe, the Tribe shall receive a credit for the difference between the fair market rental value of the land and the rate at which the land is leased to the City. The full amount of any such credit will be applied to the benefit of the Tribe to offset its obligation for the construction expenses referenced in Section 3.3. A above, provided that such credit shall be given only towards construction of a permanent fire station. Furthermore, once the credit fully covers the amount of the Tribe's fair share assessment, the Tribe will no longer be entitled to any such credit and the City will no longer be

required to pay a lease payment for use of the land, unless a lease payment is required by the Bureau of Indian Affairs or other federal agency.

3.4. Roads and Traffic Circulation. The Tribe will conduct a traffic study to determine the traffic impacts of its proposed use of the Trust Lands prior to development of a Temporary and Permanent Facility. The Tribe will mitigate traffic and circulation issues from the Facility in compliance with the Compact, which requires that such mitigation be consistent with existing local standards. The Tribe acknowledges that if any street improvements are required, that the Tribe will pay for the costs of those improvements, including City staff time to research and process these issues, in the same manner as any other developer in the City would be required to do. The Tribe further agrees that if any existing roads must be expanded due to the increase in traffic caused by the Tribe's use of the Trust Lands, the Tribe will grant rights-of-way to the City to the extent required to accommodate the expansion. All amounts spent by the Tribe for the construction of any infrastructure that qualifies towards the City's circulation plan will be credited towards the Development Impact Fees ("DIF Fees") due.

3.5 Development Impact Fees.

A. The Tribe agrees to pay a one-time payment to City for DIF Fees pursuant to City's approved rates and process. The Tribe agrees to pay DIF Fees at the rate that is operative and in force and effect on a citywide basis for all the Facilities constructed on the Trust Lands. Upon issuance of a construction permit for the Temporary Facility, the Tribe will pay an amount no less than \$100,000.00 to the City for DIF fees. The total DIF Fee due for the Permanent Facility will be due upon the issuance by the Tribe of a permit for the construction of a Permanent Facility. Any money paid by the Tribe for DIF Fees prior to the construction of the Permanent Facility will be credited toward the total DIF Fees due for the Permanent Facility.

B. School District DIF Fees are regularly charged to projects located in the City at the rate specified in the California Government Code. The Tribe agrees to pay the City the applicable School District DIF Fee that is operative and in force and effect for the Calexico Unified School District. The City agrees to forward such payment to the Calexico Unified School District within thirty (30) days of receiving the payment from the Tribe. The Tribe shall pay the total amount for the school district DIF Fees upon the issuance by the Tribe of a permit for the construction of a Permanent Facility on the Trust Lands.

3.6 Property Tax. The Tribe and the City acknowledge that, because of the status of the Trust Lands, the City will not have jurisdiction to require the payment of property taxes on the Trust Lands.

3.7 Hotel Revenue Sharing. The Tribe agrees to pay the City a Hotel Revenue Sharing payment at a rate equal to one-half of the rate of the City's then current Transient Occupancy Tax ("TOT") to be paid on a quarterly basis beginning the first quarter after the hotel is open. The Hotel Revenue Sharing payment will be derived from the applicable percentage of the revenue received from the actual occupancy figures from the rental of each hotel, motel, or lodging room. The amount of the Hotel Revenue Sharing payment shall not be adjusted unless and until the City's TOT rate is adjusted on a citywide basis. The Hotel Revenue Sharing payment shall not be applicable to rooms occupied by members of the Tribe, or to rooms that are furnished to casino patrons on a complimentary basis. The Tribe agrees that no more than forty percent (40%) of the hotel rooms will be furnished to guests on a complimentary basis during any calendar year. In return, the Tribe agrees to develop, promote and fund a marketing campaign promoting Calexico as a destination for tourists, at a cost equal to the amount of the Hotel Revenue Sharing payment, as described above, that is paid to the City on a quarterly basis. The Tribe can choose when in the year they would like to spend such marketing money, however on a yearly basis, the Tribe must spend an amount for marketing purposes that is equal to the yearly amount paid to the City as specified under this Section.

3.8 Sales Tax. The Tribe agrees to voluntarily collect the applicable sales tax that is in effect in the City of Calexico and remit the tax to the State.

3.9 Support for Public Facilities. The City has requested, and the Tribe agrees, that the Tribe will make an annual contribution to the City in the amount of two hundred fifty thousand dollars (\$250,000) to support the expansion of public facilities in the City. The initial payment shall be made to the City thirty (30) days after an occupancy certificate is issued by the Tribe for any Temporary or Permanent Facility. Thereafter, the payment shall be made on an annual basis, within 30 days of the one-year anniversary of the previous payment.

3.10 Measure J. The Tribe acknowledges that a bond measure known as Measure J has been approved by the citizens of the City for the benefit of the Calexico Unified School District. The Tribe agrees to pay an annual payment in an amount equal to the amount that

would normally be paid for the Trust Lands if the lands were not held in trust for Measure J. The City agrees to accept that money and forward it to the School District within thirty (30) days of receiving the payment from the Tribe. The first payment will be due upon issuance by the Tribe of the occupancy permit for any Temporary or Permanent gaming Facility.

3.11 Tribal Foundation. The Tribe agrees to establish a foundation to which the Tribe will contribute an amount not less than \$100,000.00 (one hundred thousand dollars) per year. The foundation will be managed by a Board of Directors to consist of five total members. At least two of the Directors of the Foundation Board shall be non-tribal members who are City residents. The Board of Directors will determine how the money donated by the Tribe will be spent within the City. The purpose of the foundation is to facilitate or implement projects, programs and activities that benefit the residents of the City.

3.12 Fees and Other Charges. Both parties agree that once land is taken into trust by the United States for the benefit of the Tribe, local taxes and laws do not apply to the land. However, the Tribe has agreed to pay certain fees as set forth in this MOU at rates comparable to those paid by the developers of other commercial projects within the City pursuant to the following standards:

(a) The Tribe shall be responsible for paying the City's then current rates for utility services (e.g., water and sewer) consistent with other ratepayers within the City. Such rates may be increased from time to time by the City; provided, however, that any such increase must be consistent with the State law which governs increases in such utility rates.

(b) The City may request from the Tribe the payment of any mitigation fees necessary to reduce to less than significant levels the demonstrated significant environmental impacts of the Facility that are not mitigated by other means. The amount of any request for mitigation payments must be reasonably related to the Facility's actual contribution to the identified environmental impact.

(c) The Tribe will reimburse the City for reasonable staff time and other costs required to facilitate the City's drafting, adoption and implementation of this MOU.

(d) Fees and charges other than those specifically described in this MOU may be applied to the Facility only in a manner agreed to by the City and the Tribe in writing during the term of this MOU.

3.13. Reservation of Tribal Status. Nothing in this MOU is intended to or shall operate to waive or impair the tax-exempt status of the Tribe under federal or State law; all such rights and privileges of the Tribe are reserved.

#### 4. MUNICIPAL SERVICES

4.1. Fire Protection and Police Department Services. The Tribe will obtain and pay for Fire Protection Services and Police Department services for the Trust Lands and any Temporary or Permanent Facility under the terms of one or more service contracts to be negotiated between the Parties at a time in which the design and layout of the proposed Facility are more definite. Such service contracts will define the level of service requested by the Tribe and provide for funds for the City to provide such services. The fire and police service contracts shall be fully executed prior to the occupancy or use of any Temporary or Permanent Facility on the Trust Lands. The scope of services included in such contracts will comply with the requirements of the Compact. In the event that the Tribe establishes its own Fire Department and/or Police Department, the service contracts with the City will be adjusted accordingly.

The City Police Department shall have authority to enforce State and local criminal laws on Trust Lands to the extent authorized by Public Law 280. The City Police Department will make every reasonable effort to coordinate and cooperate with appropriate Tribal officials during the investigation or enforcement of any criminal actions except when, in the good faith and reasonable judgment of the law enforcement officers involved, their safety, or the integrity of an investigation or enforcement action, would be materially compromised by doing so. The Tribe also agrees that they will make every reasonable effort to coordinate and cooperate with City law enforcement officials during the investigation or enforcement of any criminal actions, however in no case will the Tribe be required to cooperate in a manner that is inconsistent with the status of the Manzanita Band as a sovereign government, or that impairs or infringes upon the sovereign immunity of the Tribe.

4.2. Sewer and Water Service.

A. The Tribe shall provide for sewage disposal for the Trust Lands and the Facilities thereon by connection to the City's existing sewer collection system. The Tribe will pay fees and/or fair share assessments, obtain required easements for sewer infrastructure, construct to City sewer infrastructure standards, and dedicate to the City such sewer infrastructure, to the same extent any other developer in the City would be required to do so. Sewer service must be completed and inspected pursuant to this MOU and the service contracts described in Section 4.1 must be executed prior to any use occurring on the Trust Lands. Any approvals by the City required to implement this Section shall not be unreasonably withheld, and the standards referred to in this Section shall be substantially identical to those applied to similarly situated users.

B. The Tribe shall obtain its water supply for the Trust Lands and the Facilities thereon from the City municipal water system and shall conform to all standard requirements imposed by the City. The Tribe will pay fees and/or fair share assessments, obtain required easements for water infrastructure, construct to City water infrastructure standards, and dedicate to the City such water infrastructure, to the same extent any other developer in the City would be required to do so. Water service must be completed and inspected pursuant to this MOU and the service contracts described in Section 4.1 must be executed prior to any use occurring on the Trust Lands. Any approvals by the City required to implement this Section shall not be unreasonably withheld, and the standards referred to in this Section shall be substantially identical to those applied to similarly situated users.

C. The Tribe shall acquire the Trust Lands subject to all existing City rights-of-way and easements for the provision of sewer and water.

4.3. Solid Waste Disposal. The Tribe shall contract for solid waste disposal with the City's franchised waste hauler, however waste disposal services must be provided at the same rates as are charged for comparable uses.

4.4. Emergency Disaster Services. Not later than ninety (90) days before the public opening of any casino or related facilities constructed on the Trust Lands, and not less than annually thereafter, the City and the Tribe shall mutually develop a plan for meeting the reasonably expected emergency response needs of the Facility in the event of a disaster. The

plan shall be consistent with State and Federal mandates that are applicable to the Tribe; and shall be approved by the Tribal Government, City Manager, Police Chief and Fire Chief. The Tribe agrees to provide information to the City regarding the safety elements of the Facility and the location of any emergency or disaster preparedness equipment within the Facility. The term "disaster" includes fire, earthquake, or other natural or man-made event that might reasonably be expected to occur and involve the Facility, and that might reasonably be expected to cause catastrophic loss of life or injury. Annually, or upon reasonable request by the Tribe, the State, or the City, the parties agree to conduct an updated assessment of the need for disaster emergency response services at the Facility. If such an assessment is made at the request of the Tribe, it shall be at the Tribe's expense; otherwise the cost of performing the assessment will be borne by the government or agency requesting the assessment.

## **5. ECONOMIC DEVELOPMENT**

5.1. Employment of City Residents. The Tribe shall work in good faith with the City to employ qualified City residents at the Tribe's Facility to the extent permitted by applicable law. The Tribe shall offer, or cause to be offered, training programs to assist City residents to become qualified for positions at the Tribe's Facility to the extent permitted by applicable law. The Tribe agrees to provide information to the City on an annual basis to demonstrate the percentage of the Facility's workforce that are City residents. Nothing in this Section shall be interpreted to limit or modify in any way the Tribe's policy of Indian preference in employment.

## **6. GAMBLING REGULATION**

6.1. Allowed Gaming Age in Casino. The City has requested, and the Tribe agrees, that the gambling age in the casino will be restricted to twenty-one (21) years of age or older.

6.2. Problem Gambling. The Tribe will establish and maintain a comprehensive program to address and prevent problem gambling. The program will include: 1) training of all casino managers to recognize the signs of problem gambling; 2) posting of the problem gambling hotline number in the casino; 3) making flyers and other information available to all casino patrons; 4) making voluntary contributions to organizations that assist people with gambling problems in the Calexico area; and 5) paying into the State fund to mitigate problem gambling, as required by the Compact. The City and the Tribe agree that it is in the best interest of the two governments to work cooperatively to develop a plan to identify and address the impacts of

problem gambling within Calexico. The parties will jointly research existing programs, quantify the needs within the City, design an appropriate program, identify funding requirements, and locate and acquire funding for the program. The City and the Tribe will each appoint a representative to lead the cooperative effort. The representatives will meet periodically to develop the plan. The City and the Tribe agree to cooperate in efforts to reach out to other gaming and health service providers for funding assistance for the program; such sources include, but are not limited to, the State of California, tribal gaming operations, card rooms, racetracks, lotteries, public agencies, grants and private funding.

## **7. OPERATIONS**

7.1. Security. The Tribe shall employ and continuously maintain an adequate security and surveillance force at the Facility to reasonably secure from theft, injury, or threat thereof, the person and property of patrons, contractors, licensees, and other persons entering the Facility, as well as to protect the assets of the Tribe, in compliance with the Compact.

7.2. Parking and Access. The Tribe shall engage qualified professionals to conduct a comprehensive parking study to determine actual parking demand within a reasonable time after operation of the Facility commences. If the study shows a parking shortage, the Tribe shall implement corrective measures. If the Tribe and the City disagree as to the need for additional parking or infrastructure improvements, or the cost thereof, the parties shall resolve the dispute as provided in Section 8 of this MOU.

7.3. Access to Facility. The City shall have the right to inspect the Facility subject to the terms and conditions of the Compact.

## **8. DISPUTE RESOLUTION**

### **8.1. Dispute Resolution.**

A. Meet and Confer Process. In the event the City or the Tribe believes that the other has violated this MOU, it may request in writing that the Parties meet and confer in good faith for the purpose of reaching a mutually satisfactory resolution of the problem within fifteen (15) days of the date of service of said request, provided that if the complaining Party believes that the problem identified creates a threat to public health or safety, the complaining Party may proceed directly to arbitration as provided in Subsection D below.

B. Notice of Dispute. If either Party is not satisfied with the result of the meet and confer process, such Party may provide written notice to the other, describing any alleged violation of this MOU ("Notice of Dispute"), with particularity and setting forth the action required to remedy the alleged violation.

C. Response to Notice of Dispute. Within fifteen (15) business days of service of a Notice of Dispute, the recipient Party shall provide a written response setting forth in detail the steps it has taken and/or will take to address the problem. The failure of the recipient Party to serve a timely response shall entitle the complaining Party to proceed directly to arbitration, as provided in Subsection E below.

D. Expedited Procedure for Threats to Public Safety. If the City or the Tribe reasonably believes that a violation of this MOU has caused or will cause a significant threat to public health or safety, resolution of which cannot safely be delayed for the time periods otherwise specified in this Section, the complaining Party may proceed directly to arbitration as described in Subsection E below. At least twenty-four (24) hours before proceeding in this manner, the complaining Party shall provide to the other a written request for correction and notice of intent to exercise its rights under this Subsection D, setting out the basis for its reasonable belief that there is an imminent threat to public health or safety.

E. Binding Arbitration Procedures. Subject to prior compliance with the meet and confer process set out above in Subsection A, the Notice and Response process in Subsections B and C, and except as provided in Subsection D, either Party may initiate binding arbitration to resolve any dispute arising under this MOU. The arbitration shall be conducted in accordance with the following procedures:

(1) The arbitration shall be administered by the Judicial Arbitration Management (JAMS) in accordance with its Comprehensive Rules and Procedures or other mutually agreed upon rules.

(2) The arbitration shall be held in Imperial County, California, unless otherwise agreed. The arbitrator shall be empowered to grant compensatory, equitable and declaratory relief.

(3) If either Party requests an oral hearing, the arbitrator shall set the matter for hearing. Otherwise, the arbitrator shall decide whether to set the matter for hearing.

(4) The resulting award shall be in writing and give the reasons for the decision. Judgment on the award rendered by the arbitrator may be entered in the United States District Court for the Southern District of California in San Diego County. The costs and expenses of JAMS and the arbitrator shall be shared equally by and between the Parties unless the arbitrator rules otherwise.

8.2. Judicial Review. The Parties consent to judicial enforcement of any award in arbitration, which enforcement shall be in the United States District Court for the Southern District of California located in San Diego County. Service of process in any such judicial enforcement proceeding is waived in favor of delivery of court documents by Certified Mail – Return Receipt Requested to the following:

**FOR THE TRIBE:**

Tribal Chairperson  
Manzanita Band of Kumeyaay Indians  
P.O. Box 1302  
Boulevard, CA 91905  
Telephone: (619) 766-4930  
Facsimile: (619) 766-4957

**FOR THE CITY:**

City Manager  
City of Calexico  
608 Heber Ave.  
Calexico, CA 92231  
Telephone: (760) 768-2110  
Facsimile: (760) 768-2103

With copies to:

Jennifer Lyon, City Attorney  
McDougal, Love, Eckis,  
Smith, Boehmer & Foley  
460 North Magnolia  
El Cajon, CA 92020

8.3. Limited Waiver of Tribal Sovereign Immunity. The Tribe agrees to a limited waiver of its sovereign immunity in favor of the City for any dispute that arises out of this MOU, pursuant to the terms set forth herein for resolution of any dispute. The Tribe's governing body shall execute a formal Resolution of Limited Waiver of Sovereign Immunity substantially identical to the attached Exhibit B, which Limited Waiver is a condition for the City's execution

of this MOU. This limited waiver of sovereign immunity shall apply only to the City, and shall not operate for the benefit of, nor confer any rights upon, any third parties. The Tribe shall provide an opinion of its legal counsel, in a form reasonably acceptable to the Attorney for the City, to the effect that the waiver of sovereign immunity as stated in this Section and Exhibit B attached hereto has been adopted by the Tribe in accordance with both Tribal and Federal law and is effective.

8.4 Limitation of Actions. The Tribe's waiver of immunity from suit specifically allows the following actions and remedies:

A. Damages. This includes the enforcement of an award of money and/or damages by arbitration or court enforcement of an arbitration award; provided however that the arbitrator(s) and/or the court shall have no authority or jurisdiction to order execution against any assets or revenues of the Tribe except: (1) undistributed or future revenues of the Tribe's Facility in the City; (2) the future revenues of any other gaming operations conducted by the Tribe; (3) the assets of the Facility; and (4) any property that the Tribe acquires within the City, other than the Property that is intended to be the location of the Gaming Facility. In no instance shall any enforcement of any kind whatsoever be allowed against any assets of the Tribe other than the limited assets of the Tribe specified in this Section.

B. Consents and Approvals. This includes the enforcement of a determination by an arbitrator that either Party's consent or approval has been unreasonably withheld contrary to the terms of this MOU.

C. Injunctive Relief and Specific Performance. This includes an action brought to preserve the status quo under Section 8.7 of this MOU or to otherwise compel arbitration or performance under this MOU.

8.5. Attorneys Fees. In the event either Party commences an Action (as defined herein) against the other Party which arises out of a default of, breach of, failure to perform this MOU or otherwise related to this MOU, the Prevailing Party in the Action shall be entitled to recover its Dispute Resolution Expenses (as defined herein) from the other Party in addition to whatever relief to which the Prevailing Party may be entitled. For the purposes of this Section, the term "Action" means any actions specified under Section 8.4 above, any arbitration or

mediation, any action to enforce an arbitration award, or any other alternative dispute resolution procedure, and the filing, recording, or services of any process, notice, claim, lien, or other instrument which is a prerequisite to commencement of the Action. For the purposes of this section, the term "Dispute Resolution Expenses" means all costs and expenses, to the extent such are reasonable in amount, that are actually and necessarily incurred in good faith by the Prevailing Party directly related to the Action. For the purposes of this Section, the term "Prevailing Party," shall have the meaning ascribed in Code of Civil Procedure section 1032(a)(4).

8.6. Indemnification. Equitable indemnification principles under California law shall be applicable to this MOU. Either party may enforce its right to equitable indemnification through the procedures set out under Section 8 of this MOU.

8.7. Performance During Disputes. It is mutually agreed that during any kind of controversy, claim, disagreement or dispute, including a dispute as to the validity of this MOU, the City and Tribe shall continue to possess the rights, duties, and obligations set forth in this MOU, and the Tribe and the City shall continue their performance of the provisions of this MOU and its Exhibits. The City and the Tribe shall each be entitled to injunctive relief from a federal court or other competent authority to maintain such rights, duties, and obligations during any dispute, controversy, claim or disagreement arising out of this MOU.

## 9. GENERAL PROVISIONS

9.1. Notice. Any notice required to be given pursuant to this MOU shall be delivered to the appropriate Party by Federal Express or by Certified Mail Return Receipt Requested, addressed as follows:

If to the Tribe:

MANZANITA BAND OF THE KUMEYAAAY NATION  
P.O. Box 1302  
\_\_\_\_\_  
Boulevard, CA 91905  
Attn: Tribal Chair

Copies to:

\_\_\_\_\_  
Tribe's Attorney

If to City:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
City Manager  
City of Calexico  
608 Heber Ave.  
Calexico, CA 92231

Copies to:

Jennifer Lyon, City Attorney  
Mc Dougal, Love, Eckis,  
Smith, Boehmer & Foley  
460 North Magnolia  
El Cajon, CA 92021

or to such other different address(es) as City or the Tribe may specify in writing. Any such notice shall be deemed given two (2) days following deposit in the United States mail or upon actual delivery, whichever first occurs.

9.2. Authority to Execute and Perform MOU. The Tribe and the City represent and warrant to each other that they have full power and authority to execute this MOU and to be bound by and perform the terms hereof. On request, each Party shall furnish the other evidence of such authority. The persons executing this MOU on behalf of the Parties hereto warrant that (a) such Party is duly organized and existing, (b) they are duly authorized to execute and deliver this MOU on behalf of said Party, (c) by so executing this MOU, such Party is formally bound to the provisions of this MOU, and (d) the entering into this MOU does not violate any provision of any other MOU to which said Party is bound.

9.3. Waivers. No failure or delay by the City or the Tribe to insist upon the strict performance of any term or condition of this MOU, or to exercise any right or remedy upon the breach thereof, shall constitute a waiver of any such breach or any subsequent breach of such term or condition. No term or condition of this MOU, and no breach thereof shall be waived, altered or modified except by written instrument. No waiver of any breach shall affect or alter this MOU, but every term and condition of this MOU shall continue in full force and effect with respect to any other then existing or subsequent breach thereof.

9.4. Captions. The captions for each Section and Subsection are intended for convenience only.

9.5. Interpretation; Severability. It is the intent of the parties that this MOU be interpreted as a whole to carry out the intent of the Parties. If any provision hereof is challenged as being invalid or unenforceable, it shall be construed, insofar as possible, to uphold its enforceability and if it cannot, and is held invalid or unenforceable, it shall be held severable and said invalidity shall not affect the validity of the remainder of this MOU, so long as the fundamental purposes hereof can be obtained.

9.6. Periods of Time. Whenever any action is to be taken on a date specified in this MOU, if such date falls on a Saturday, Sunday, or legal holiday under the laws of the Tribe or the State of California, said date shall be extended to the next day which is not a Saturday, Sunday or legal holiday.

9.7. Amendment. The parties may from time to time approve amendments hereto in the same manner as this MOU was approved. Any change to or modification of this MOU must be in writing signed by both Parties. Both Parties agree to negotiate in good faith to further the objectives of this MOU.

9.8. Entire MOU. This MOU, including the Exhibits referred to herein and any documents referenced herein or executed by the parties simultaneously herewith, which are expressly incorporated herein by reference, constitutes the entire understanding and MOU of the Parties hereto and supersedes all prior written or oral agreements between the Parties.

9.9. Government Savings Clause. Each Party agrees to execute, deliver and if necessary, record all additional instruments, certifications, amendments, modifications and other documents as may be required by the U. S. Department of the Interior, BIA, NIGC, the office of the Field Solicitor, or by any applicable statute, rule or regulation in order to effectuate, complete, perfect, continue or preserve the respective rights, obligations and interests of the Parties to the fullest extent permitted by law; provided, that any such additional instrument, certification, amendment, modification or other document shall not materially change the respective rights, remedies or obligations of either Party under this MOU or any other MOU or document related hereto.

9.10. Preparation of MOU. This MOU was drafted and entered into after careful review and upon the advice of competent counsel; it shall not be construed more strongly for or against either Party. This MOU may not be unilaterally amended and shall be strictly construed as set forth herein to accomplish the purposes of the MOU.

9.11. Standard of Reasonableness. Unless specifically provided otherwise, all provisions of this MOU and all collateral MOUs shall be governed by a standard of reasonableness.

9.12. Execution. This MOU may be executed in four counterparts, two to be retained by each Party. Each of the four originals is equally valid.

9.13. Status Under Federal Law. This MOU does not constitute, create or convey an interest or encumbrance in real estate and shall not be recorded in any real estate records. In the event of default by the Tribe hereunder, the City's remedies are described in Section 8 of this MOU. The Tribe does not grant to or confer upon the City any authority with respect to the Trust Lands or Facility which is inconsistent with applicable federal law. The City and the Tribe agree that the City's continuing relationship with the Tribe with respect to the Trust Lands or Facility, shall be governed solely by the provisions of this MOU. The Parties further acknowledge that any other regulatory or other rights the City may have or claim with respect to the Trust Lands or Facility, or which are inconsistent with the provisions of this MOU, shall be discharged effective upon the conveyance of title to the Property to the United States to be held in trust for the Tribe as herein contemplated; provided, however that the City shall retain any and all rights provided under federal law.

9.14. No Third Party Beneficiaries. This MOU is not intended to, and shall not be construed to, create any right on the part of a third Party to bring an action to enforce any of its terms, or otherwise to impair the sovereign immunity of the Tribe.

9.15. Term. This MOU shall become effective upon its execution by the Parties hereto. In the event that the BIA determines that 25 U.S.C Section 81 requires this MOU to be executed for a specific period of time, the Parties agree that it shall be effective for the duration of the Compact, or any amendment or extension thereof. In the event that the BIA does not require a specific term, it is the intent of the parties that this MOU shall remain in full force and effect until terminated by mutual agreement of the Parties. If one party seeks to terminate this MOU

and the other party does not agree to terminate, then the Parties shall resolve the dispute as provided in Section 8 of this MOU. If the Tribe is informed that the United States will not take the land into trust or that the Tribe may not conduct gaming activities thereon, this MOU shall terminate thirty (30) days after the Tribe is so informed. The Parties further agree that prior to the Property being taken into trust for the benefit of the Tribe, either party may terminate this MOU if its participation becomes fiscally infeasible subject to the right of the other party to an expedited dispute resolution review under Section 8.1(D) of this MOU.

9.16. Scope of Liability. The Parties intend that the scope of obligations and liabilities of the City to the Tribe and the Trust Lands regarding any municipal services shall be in parity with the obligations and liabilities, which normally operate with respect to citizens and businesses within the jurisdiction of the City. Consequently, nothing in this MOU shall: (1) expand or reduce any obligation of the City to provide services to the Tribe or the Trust Lands, or (2) expand or reduce any liability for damages with respect to the delivery of any services by the City beyond those obligations and liabilities which would be imposed by law as to citizens and businesses otherwise subject to the jurisdiction of the City.

## **10. MISCELLANEOUS PROVISIONS**

10.1. Support for Project. In consideration for the obligations undertaken by the Tribe herein, the City shall provide the correspondence attached as Exhibit C to the United States Department of Interior, Bureau of Indian Affairs, in support of the application of the Tribe to the United States, shall request the United States to take the lands identified by the Tribe into trust for the benefit of the Tribe, and shall respond to inquiries about the Tribe's trust application from the Bureau of Indian Affairs in a manner that is consistent with Exhibit C, and shall provide all other correspondence or documents reasonably requested by the Tribe to facilitate or promote the development and successful operation of the Facility.

10.2. Tribal-City Joint Meetings. To promote a mutually beneficial relationship between the City and the Tribe, both Parties agree to have regular meetings to discuss ongoing issues with respect to the Trust Land, the Facility, City services, and any joint venture projects. Such meetings shall comply with the Brown Act requirements and any applicable Tribal laws. The parties agree to have these meetings at least once per year.

10.3. Other Development Projects. The Parties understand and agree that the Tribe may in the future undertake projects or development on the Trust Lands which are not specified in Exhibit "A" attached hereto. To preserve good relations and to further the interests of the surrounding community, the Tribe and the City agree that the Tribe shall undertake no new development that would be inconsistent with the moral climate of the community, including but not limited to adult entertainment and sexually oriented businesses as defined in the City's Municipal Code. If the Tribe plans to undertake new development projects, it will notify the City at least three months prior to the commencement of construction of the new project and will negotiate in good faith with the City concerning an MOU for the protection of the Parties' interests and the well being of the surrounding community.

WHEREFORE, IN WITNESS THEREOF, the Parties hereby execute and enter into this MOU with the intent to be bound thereby through their authorized representatives whose signatures are affixed below.

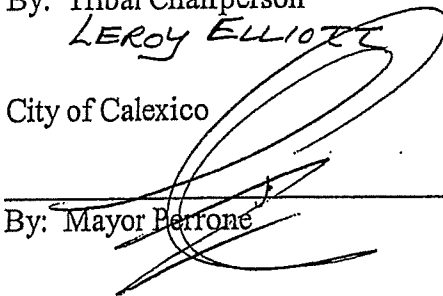
Manzanita Band of the Kumeyaay Nation



By: Tribal Chairperson

LERoy ELLIOTT

City of Calexico

  
By: Mayor Perrone

4/5/06

Date

4-04-2006

Date



## EXHIBIT A

The provisions of this MOU are based on the Tribe's proposal to develop a first-class high-quality destination resort including a tribal gaming casino, hotel(s), restaurant(s), and other hospitality and entertainment amenities. The casino will have an anticipated total of 2000 slot machines and will not exceed the maximum allowed under the Tribal-State Gaming Compact between the Tribe and the State of California.

In addition to gaming, the following uses may be developed in conjunction with the Resort specifically authorized under this MOU. All uses shall be supportive uses to the gaming facility:

- Parking Structure
- Hotel/Motel
- Retail Mall
- Restaurants/Coffee Shops/Snack Bars
- Banquet Meeting Hall
- Entertainment Venue

If a use not listed above is proposed, and the City and Tribe cannot agree that the use is gaming-related, or is similar to the uses listed above, then the parties shall resolve the issue under the provisions in Section 8 of this MOU.



# Manzanita Band of the Kumeyaay Nation

## RESOLUTION

NO: 06.01

- WHEREAS,** the Manzanita Band of the Kumeyaay Nation (Tribe), also known as the Manzanita Band of Diegueno Mission Indians is a federally recognized Self-Governance Indian Tribe by the United States Government possessing inherent powers of self-governance with duties, rights, responsibilities, and with power and authority over the lands within the exterior boundaries of the Manzanita Indian Reservation; and
- WHEREAS:** The Tribe operates pursuant to it's Constitution and Bylaws adopted on July 12, 1975 pursuant to the Indian Reorganization Act and approved by the Commissioner of Indian Affairs on January 9, 1976; and
- WHEREAS,** Pursuant to Article VI, Section 1 (E) of the Constitution and bylaws, the General Council of the Manzanita Band has the power and responsibility to "administer assets and to manage all economic affairs and enterprises on unassigned lands of the Manzanita Band of Mission Indians;" and
- WHEREAS,** Manzanita Economic Development Corporation ("MEDCO") has identified an opportunity to establish and operate a gaming enterprise pursuant to the Indian Gaming Regulatory Act and a tribal-state gaming compact with the State of California, along with related non-gaming enterprises, in Imperial County, California, for the purpose of creating employment opportunities for tribal members and generating revenues for the Tribe (the "Project"); and
- WHEREAS,** The Project would be developed on lands which must be acquired by the United States in trust for the Tribe for gaming purposes and which are not included in the authorization of the Tribe's Tribal-State Gaming Compact with the State of California dated September 10, 1999 ("Compact"); and
- WHEREAS,** The General Council has previously passed Resolutions 04.20, 04.21, and 04.22, finding that the Project would be in the Tribe's interest, and authorizing the Executive Committee of the Tribe to take all necessary actions in furtherance of the Project, and
- WHEREAS,** The Tribe has negotiated a Memorandum of Understanding ("the MOU") with the City of Calexico (the "City"), which MOU includes numerous benefits for the Tribe, and which MOU includes a dispute resolution provision for the arbitration of disputes between the Tribe and the City concerning the Project; and
- WHEREAS:** form of the MOU has been prepared and submitted to the General Council; and
- WHEREAS:** it is the intent and desire of the General Council: (i) to execute and deliver the MOU, and to perform its obligations under the MOU; (ii) to adopt as applicable law to the MOU certain provisions of California substantive law for the sole and exclusive purpose of providing a mechanism for the establishment of the validity, legality and enforceability of any interest granted or created under the MOU, and

# Manzanita Band of the Kumeyaay Nation

the enforcement of such interest; (iii) to declare and confirm the legality, validity, enforceability and binding nature of the MOU at such time as it is fully executed; and (iv) to make a limited waiver of the Nation's sovereign immunity from suit, action or arbitration to the extent provided in the MOU; and

**WHEREAS:** As part of the dispute resolution provisions of the MOU, the Tribe has been asked to provide a limited waiver of the sovereign immunity of the Tribe, for the purpose of the enforcement of an arbitration award in the event of a future dispute; and

**NOW THEREFORE BE IT RESOLVED,** the General Council hereby approves and ratifies the MOU between the Tribe and the City, and further authorizes a limited waiver of the sovereign immunity of the Manzanita Band for the purpose of resolving any dispute under the MOU; and

**BE IT ALSO RESOLVED,** that the General Council approves the form of the MOU, subject to such modifications as are deemed appropriate and approved by the Chairperson of the Committee ("Chairperson"), upon the advice of the attorneys for the Nation, which approval shall be conclusively evidenced by execution of the MOU by the Chairperson. The Chairperson is hereby authorized, empowered and directed to execute and deliver the MOU on behalf of the Nation, and to execute and deliver such other instruments, agreements and certifications as may be contemplated by the MOU or as may be required to implement the terms of the MOU or give effect to the transactions herein contemplated, and to take such other actions as may hereafter be necessary and appropriate to carry out the obligations of the Nation thereunder, including but not limited to agreements with the City for fire and police department services; and

**BE IT FURTHER RESOLVED,** that the provisions of the MOU providing for governing law, a limited waiver of sovereign immunity of the Nation, consent to arbitration and the consent to court jurisdiction (collectively, the "Legal Provisions"), are specifically approved by the General Council, and shall constitute the applicable law of the MOU so long as the MOU shall be in effect. However, the Nation's limited waiver of its sovereign immunity shall be irrevocable; and

**BE IT FURTHER RESOLVED,** that in the MOU, the parties have agreed that federal law shall govern the interpretation and enforcement of the MOU or any claim, dispute or controversy arising thereunder, and the General Council hereby approves such choice of law and determines that such choice of law shall be valid and enforceable, and not subject to revocation by one party without the consent of the other party or parties thereto; and

**BE IT FURTHER RESOLVED,** the General Council hereby declares that upon due execution of the MOU, it shall be and become a legal and valid obligation of the Nation, enforceable in accordance with its terms. Except as expressly set forth in or expressly contemplated by the MOU, no physical delivery, filing or other act need be performed to validate the interests of the City thereunder; and

**BE IT FURTHER RESOLVED,** the General Council hereby consents to any action to enforce the agreement, enforce the agreement to arbitrate, to compel arbitration pursuant to such an agreement to arbitrate and to enforce an award made by an arbitrator

# Manzanita Band of the Kumeyaay Nation

pursuant to such agreement to arbitrate and to the jurisdiction of the federal district courts and the federal circuit court located in the state of California, and the U.S. Supreme Court that in any proceeding relating to the enforcement of the MOU, the arbitration provisions in the MOU and any arbitration award; and

**BE IT FURTHER RESOLVED**, that the General Council hereby determines that no laws, ordinances, resolutions or other actions of the General Council, or any of the agencies or instrumentalities of the Nation, either written or established by custom or tradition, prohibit the General Council from approving the execution or delivery of the MOU or undertaking any foregoing approved action; and

**BE IT FURTHER RESOLVED**, that the General Council shall not pass or adopt any resolutions or approve or allow any other action of the Nation, or any of its officers, employees, agents, subdivisions, agencies or instrumentalities, of any nature that shall impair the contractual rights of any party under the MOU or the obligations of the Nation under the MOU, for so long as any amounts owing under the MOU shall remain outstanding. Upon execution of the MOU, as herein authorized, the MOU shall become a legal, valid and binding obligation of the Nation, enforceable in accordance with its terms for purposes of laws of the Nation, laws of the state of California and the laws of the United States and the laws of all other applicable jurisdictions; and

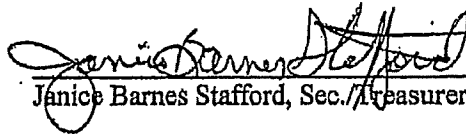
**BE IT FURTHER RESOLVED**, that this Resolution shall become effective as of the date and time of its passage and approval by the General Council.

## CERTIFICATION

This is to certify that this Resolution NO: 06.01 was adopted at a duly called meeting of the Manzanita General Council, San Diego County, California, on the 4<sup>th</sup> day of March, 2006 by a vote of 16 "yes", 0 "no" and 0 "abstaining". This Resolution NO: 06.01 shall stand until rescinded.



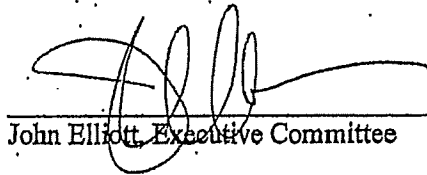
Leroy J. Elliott, Tribal Chairman



Janice Barnes Stafford, Sec./Treasurer



Angela Santos, Executive Committee



John Elliott, Executive Committee

## EXHIBIT C

The Parties agree that the City will send a letter supporting the Tribes fee-to-trust application as follows (though this may at a later date be modified by mutual agreement of the Parties):

Name & Address of Contact

Dear \_\_\_\_\_:

It is with great pleasure that I, on behalf of the City Council of the City of Calexico, California, provide this letter of support for the fee-to-trust application, which has or soon will be submitted by the Manzanita Band of Kumeyaay Indian Tribe regarding land located here in the City of Calexico.

Based on information currently available to us we believe that development of an Indian casino in the City of Calexico will provide very significant benefits to the local community. Further, we have worked closely with the Tribe as it has developed its proposal to develop a gaming facility here, and we have reached a mutually agreeable Memorandum of Understanding ("MOU") that we believe will benefit both parties. The MOU provides a workable framework on which the relationship between the City and the Tribe can continue to be effective and mutually beneficial into the future. A copy of that Agreement is enclosed. Additionally, the citizens of the City voted favorably to allow the City to enter into negotiations with the Tribe to create the MOU. The MOU was created after several town hall type meetings to discuss issues of concern to the local community.

The City will be completing the appropriate level of environmental review when the City is required to approve and extend services to any trust lands. The Tribe will also be providing the City with documentation regarding any environmental review that the Tribe will do for the project. The Tribe will be mitigating any impacts from the project pursuant to the MOU.

If you have any questions about the City's support for the Tribe's fee-to-trust application and the proposed gaming facility related thereto, please do not hesitate to contact me at \_\_\_\_\_.

Sincerely,

\_\_\_\_\_  
Mayor

cc: The Hon. Arnold Schwarzenegger, Governor of the State of California

**RESOLUTION NO. 06-09**

**A RESOLUTION OF THE CITY COUNCIL OF THE  
CITY OF CALEXICO, CALIFORNIA, APPROVING THE MEMORANDUM OF  
UNDERSTANDING BETWEEN THE CITY AND THE MANZANITA BAND OF  
KUMEYAAY INDIANS REGARDING CERTAIN FINANCIAL ARRANGEMENTS  
AND TERMS AND CONDITIONS FOR THE PROVISIONS OF SERVICES TO A  
POTENTIAL TRIBAL CASINO IN CALEXICO.**

**WHEREAS**, the City Council of the City of Calexico is the governing body of the City and charged with the responsibility to enter into memorandums of understanding ("MOU") between the City and other parties, and

**WHEREAS**, the Manzanita Tribe intends to acquire land within the City and seek to have that land put into trust by the Bureau of Indian Affairs ("BIA"), however no specific parcel has been identified at this time; and

**WHEREAS**, pursuant to a favorable vote by the citizens of the City in June 2005, the City and the Tribe seek to work together to mitigate impacts that a casino may have; and

**WHEREAS**, this MOU is based on the estimated size and description of future development of an Indian gaming facility in the City; and

**WHEREAS**, no specific timeline has been identified for construction of the Facility at this time; and

**WHEREAS**, this MOU is intended solely as a funding arrangement between the Parties and is not a "project" as defined by the California Environmental Quality Act ("CEQA"); and

**WHEREAS**, the City will perform any required environmental review for the proposed Indian gaming Facility at the earliest possible time that such review can be meaningfully accomplished; and

**WHEREAS**, given the uncertainty of approvals and timelines for the Indian gaming Facility, this MOU does not bind the City to providing any services at this time; and

**WHEREAS**, the City is prepared to support the Tribe's trust application to the United States if the Tribe enters into this enforceable MOU to mitigate the impacts of the development.

**WHEREAS**, the City formed an ad hoc Casino Advisory Committee which held several public meetings to gather public input for the MOU; and

WHEREAS, the City also held a duly noticed public meeting on February 9, 2006 to review and consider this MOU.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CALEXICO AS FOLLOWS:

SECTION 1. The Council finds that the above-listed recitals are true and correct.

SECTION 2. After considering the interests of the public as reflected, in part, in the Staff Report and public testimony, the City Council hereby approves the Memorandum of Understanding that is attached hereto and incorporated herein by reference as Exhibit "A."

SECTION 3. The Council further directs staff to take all necessary steps to implement the MOU, including the drafting and sending of any letter of support for the trust application or proposed project.

PASSED, ADOPTED, AND APPROVED by the City Council of the City of Calexico at the regular meeting this 9th day of February, 2006.

  
ALEX PERRONE, Mayor

ATTEST:

  
LOURDES CORDOVA, City Clerk

APPROVED AS TO FORM:

  
JENNIFER M. LYON, City Attorney

STATE OF CALIFORNIA )  
CITY OF CALEXICO )  
COUNTY OF SAN DIEGO )

ss.

I, Lourdes Cordova, City Clerk of the City of Calexico, do hereby certify under the penalty of perjury, that the foregoing Resolution No. 06-09, was duly adopted by the City Council at a meeting of said City Council held on the 9th day of February, 2006, and that it was so adopted by the following vote:

AYES: Durazo, Ouzan, Perrone, Pacheco, Renison  
NOES: None  
ABSTAIN: None  
ABSENT: None

  
LOURDES CORDOVA, City Clerk  
City of Calexico